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INDEX.

Page

Petition for writ of certiorari..... 1-15
Affidavit to petition..... 16
Brief in support of petition for writ of certiorari 17-30

Authorities Cited.

Boston & Maine R. R. v. Hooker, 233 U. S. 97...11, 19
Davis v. Wechsler, 263 U. S. 22..... 10
Express Co. v. Croninger, 226 U. S. 491..... 19
Express Co. v. Levee, 263 U. S. 19.....10, 19, 22
Express Co. v. Lindenburg, 260 U. S. 584.....10, 19
Hines v. Burnett, 107 S. E. 657..... 19
Houston & Texas Railway Co. v. U. S., 234 U. S. 342 .....11,14, 25
Kansas City Southern Ry. Co. v. Carl, 227 U. S. 652 19
Northern Pacific R. R. Co. v. State of North Dakota, 250 U. S. 135..... 10
Northern Pacific Ry. Co. v. State of North Dakota, 250 U. S. 135..... 20
Powell v. Hines, 104 S. E. 533..... 19
Proclamation of the President, December 26, 1917 19
Railroad Co. v. Maxwell, 237 U. S. 94.....11, 19
Railroad Co. v. Sawmill Co., 251 S. W. 434..... 19
Railway Co. v. Rankin, 241 U. S. 319..... 19
Transportation Act 1920, 41 Stat. L. 464, Sec. 208 (a) 11
24 Stat. L. 379, as amended by 34 Stat. L. 584, and 41 Stat. L. 483..... 18
39 Stat. L. 645..... 19

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1924.

MISSOURI PACIFIC RAILROAD COMPANY,
Petitioner,
vs.
BYRD J. BOONE,
Respondent.
No.....

PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Supreme Court of the United States:

Your petitioner, Missouri Pacific Railroad Company, presents this, its petition, and prays that a writ of certiorari may be granted directing the St. Louis Court of Appeals of the State of Missouri to certify to this Honorable Court for its review and determination, the case of Byrd J. Boone, respondent, v. Missouri Pacific Railroad Company, appellant,

being Cause No. 18,481 of said St. Louis Court of Appeals and, for reasons of this application and petition, your petitioner respectfully shows to this Court that on the 11th day of September, 1922, Byrd J. Boone, a resident of the City of St. Louis, Missouri, instituted this suit in the Circuit Court of the City of St. Louis, Missouri, against your petitioner, wherein said Byrd J. Boone prayed judgment against your petitioner for the reasonable value of a certain trunk and contents which respondent alleged she had delivered to your petitioner at Jefferson City, Missouri, for transportation to Sedalia, Missouri, but which, it was alleged, your petitioner delivered to another person than respondent at the destination of said baggage; that, in her petition which was filed in said Circuit Court, respondent averred that your petitioner was a common carrier for hire of passengers and baggage between said points; that on the 3rd day of January, 1922, she became a passenger for hire on your petitioner's line of railroad from said Jefferson City, Missouri, to Sedalia, Missouri, and, at the same time, delivered to your petitioner said trunk and contents; that, in consideration of her becoming such passenger and paying the lawful and customary fare, your petitioner agreed and promised to safely carry said baggage between said points and to deliver same to respondent at Sedalia, Missouri, in as good condition as when received by it, but that,

in violation of said agreement and in disregard of its duty as a common carrier, your petitioner failed and neglected to deliver said baggage to respondent at its destination but, in disregard of its duty, delivered same to one John H. Clark, all to the damage of respondent as prayed in said petition.

Your petitioner further shows that, by its answer filed in said cause, after admitting that respondent became a passenger upon its railroad and delivered said baggage to it for transportation between said points, your petitioner set up as an affirmative defense, that its liability for the loss of said baggage was, under the circumstances set forth in said answer and hereinafter set forth, limited to the sum of one hundred dollars ($100.00), the averments of said answer being, in substance, as follows:

> (1) That prior to said 3rd day of January, 1922, by virtue of the provisions of the Acts of Congress known as the Interstate Commerce Act and the Federal Control Act, and during the period of federal control of railroads, the Director General of Railroads had filed with the Interstate Commerce Commission at Washington, D. C., certain tariffs, rules and regulations governing the transportation of baggage over your petitioner's road, wherein it was provided that, unless a greater sum was declared by a passenger and charges paid for excess value at the time of delivery of the baggage to the carrier, the value

of property belonging to, or checked for, the said passenger should be deemed and agreed to be not in excess of one hundred dollars ($100.00); that said tariffs, so filed by the Director General of Railroads, governed the transportation of baggage over your petitioner's line of railroad moving between points in the State of Missouri, as well as from points in the State of Missouri to points in other states on the line of your petitioner's railroad, and whether said baggage moved in interstate or intrastate commerce, and that by said tariffs your petitioner's liability was limited in the event of loss of or damage to respondent's baggage to said sum of one hundred dollars ($100.00) and that said tariffs, rules and regulations so filed and promulgated by said Director General continued in full force and effect until February 29, 1920.

(2) That, by the Act of Congress in effect March 1, 1920, known as the Transportation Act 1920, and by Section 208 (a) thereof, it was provided that all rates, fares and charges and all classifications, regulations and practices in anywise affecting or determining any part, or the aggregate, of rates, fares and charges, or the value of service rendered which, on February 29, 1920, were in effect on the line of railroad of your petitioner, should continue in force and effect until thereafter changed by state or federal authority, or pursuant to authority of law, and that after said March 1, 1920, and prior to said 3rd day of January, 1922, on which latter date respondent delivered said baggage to your petitioner for transportation, said tariffs and rules

governing the transportation of baggage were not changed by either state or federal authority or pursuant to authority of law, but were in full force and effect, governing the transportation of baggage by your petitioner between points upon the line of its railroad within the State of Missouri.

(3) That respondent did not, at the time of delivering said baggage to your petitioner, declare any greater value thereof than the sum of one hundred dollars ($100.00), and did not pay, or offer to pay, any charges for excess value thereof; and,

(4) That said baggage was accepted by your petitioner and it agreed to transport, and undertook the transportation thereof, subject to all tariff regulations then in force, for which reason it was averred in said answer that if respondent was entitled to recover, her recovery could not be for any greater amount than the sum of one hundred dollars ($100.00).

Your petitioner further shows that, upon the trial of said cause, it was stipulated between the parties hereto that said baggage was delivered to your petitioner's agent at Jefferson City, Missouri, on January 3, 1922, and was by him checked for transportation over your petitioner's railroad to Sedalia, Missouri; that it was received by your petitioner's agent at Sedalia on said date; that, shortly after the arrival thereof at Sedalia, while in your petitioner's baggage room in its station at said point, one John H.

Clark removed the check which had been attached to said baggage at Jefferson City, Missouri, and substituted and attached thereto another check in lieu thereof, the duplicate of which latter check was in the possession of said Clark, and that, at some time during the following night, said baggage was delivered by your petitioner's agent at Sedalia, Missouri, to a local drayman acting as the agent of said Clark, upon the presentation of the duplicate check referred to, and that the said Clark then caused said baggage to be shipped out of Sedalia by way of another railroad.

Your petitioner further shows that, upon the trial of said cause, respondent produced and identified the check which was issued for said baggage by your petitioner's agent at Jefferson City, Missouri, which check contained a provision to the effect that said baggage was "transported subject to tariff regulations," and which said check was admitted in evidence; that respondent testified, without objection, that upon delivery of said baggage to your petitioner's agent at Jefferson City, Missouri, she had no conversation with reference to the value thereof and did not declare any value on either said trunk or contents, and that respondent testified to the value of the property lost; which was all of the evidence offered by respondent.

Your petitioner further shows that, upon said trial, it offered, but the trial court, on objection of respondent, excluded, evidence tending to establish that, during the period of federal control, the Director General of Railroads had filed with the Interstate Commerce Commission a certain baggage tariff, to wit, Baggage Tariff No. 25-2 and Supplement No. 2 thereof, effective February 29, 1920, which provided that, unless a greater sum was declared by a passenger and charges paid for excess value at the time of delivery to carrier, the value of property belonging to or checked for a passenger should be deemed and agreed to be not in excess of the sum of one hundred dollars ($100.00), and that the carriers, including your petitioner, issuing and participating in this tariff would not accept claim for a greater sum in case of loss or damage; and your petitioner further offered, but the trial court, upon objection of respondent, excluded, evidence tending to establish not only that said tariffs were not, subsequent to February 29, 1920, and prior to said 3rd day of January, 1922, changed by any state authority of the State of Missouri, or pursuant to authority of law, but that, upon the contrary, they were continued in full force and effect subsequent to said February 29, 1920, and were in full force and effect within the State of Missouri on said 3rd day of January, 1922. And your petitioner further offered evidence tending

to establish that the Public Service Commission of Missouri, a body empowered by the laws of the State of Missouri to promulgate and enforce rates and charges governing the transportation of baggage within the State of Missouri, in pursuance of the provisions of said Act of Congress known as the Transportation Act, 1920, had ordered the tariffs and rates governing the transportation of baggage which were in effect on February 29, 1920, continued in force thereafter within the State of Missouri, and that said tariffs and rates were in effect on said 3rd day of January, 1922.

Your petitioner further shows that all of the evidence thus offered by it was excluded by the trial court upon objection of respondent and that the trial of said cause resulted in a judgment in favor of respondent and against your petitioner for the sum of One Thousand and Sixty Dollars ($1,060.00), from which judgment, in accordance with the Statute of the State of Missouri and the rules of practice obtaining in said state, your petitioner appealed to the St. Louis Court of Appeals, which court affirmed the judgment of the trial court and that, in the submission and argument of said cause, there were presented to said St. Louis Court of Appeals, upon the record therein, the questions whether, in view of the testimony of respondent herself that, at the time of the delivery of her baggage to your petitioner for

transportation, she did not declare any value of same and whether, in view of the fact that the baggage check which was issued to her by your petitioner, which respondent produced at the trial and which was admitted in evidence without any objection by respondent, bore upon its face the words "transported subject to tariff regulations," thereby tending to establish that the transportation of said baggage was undertaken, not only as required by law, but also by express agreement of the parties, subject to tariff regulations, the trial court erred in not admitting the evidence offered by your petitioner tending to establish the provisions of such tariff regulations and that they were in force at the time of, and governed, the transportation of respondent's baggage and were determinative of the rights of the parties hereto and of the amount of recovery in the event of loss of or damage to said baggage.

Your petitioner further shows that, in affirming said judgment, said St. Louis Court of Appeals held that the ruling of the trial court excluding the evidence offered by your petitioner, as hereinabove referred to, was proper and further held that the mere delivery by your petitioner of respondent's trunk and contents to said John H. Clark constituted a conversion by your petitioner of said baggage, which amounted to an abandonment of the contract of transportation, for which reason your petitioner was

not entitled to limit its liability in accordance with the provisions of said tariff and your petitioner further shows that said St. Louis Court of Appeals further held that while, under certain decisions of the Supreme Court of the United States, respondent could not have sued in trover as for a conversion and recovered more than the value stated in the tariffs, those decisions were not controlling for the reason that, this being an intrastate shipment, your petitioner was liable for the full value of respondent's baggage because of its holding that your petitioner was guilty of a conversion of same by the mere act of delivering said baggage to said Clark instead of to respondent, and your petitioner further shows that, in so holding, the decision of said St. Louis Court of Appeals upholds and enforces a clear discrimination in favor of the owner of baggage transported in **interstate** commerce and the owner of baggage transported in **intrastate** commerce where the loss of said baggage is due to identically the same act and said decision is, therefore, in conflict with the law as announced by this Court in the following cases:

Express Co. v. Levee, 263 U. S. 19;
Express Co. v. Lindenburg, 260 U. S. 584;
Northern Pacific R. R. Co. v. State of North Dakota, 250 U. S. 135;
Davis v. Wechsler, 263 U. S. 22;

Houston & Texas Railway Co. v. U. S., 234 U. S. 342;
Railroad Co. v. Maxwell, 237 U. S. 94;
Boston & Maine R. R. v. Hooker, 233 U. S. 97;
Transportation Act 1920, 41 Stat. L. 464, Sec. 208 (a).

Your petitioner further shows that within the time provided by the rules of said St. Louis Court of Appeals it filed its motion for a rehearing and filed a brief in support of said motion, which said motion for rehearing was by said St. Louis Court of Appeals, on the 11th day of July, 1924, by order duly entered of record, overruled, whereupon the judgment in said St. Louis Court of Appeals became final, subject only to the right of your petitioner to apply to the Supreme Court of Missouri for its writ of certiorari, as set forth in the next succeeding paragraph of this petition.

Your petitioner further shows that said St. Louis Court of Appeals is the court of final appellate jurisdiction in Missouri in all cases in which the amount in dispute does not exceed the sum of seven thousand five hundred dollars ($7,500.00); that it is the court of final appellate jurisdiction of this case; that while, under the provisions of the Constitution of the State of Missouri, the Supreme Court of said state is given superintending control over said St. Louis Court of Appeals by writ of certiorari, said writ will not be is-

sued to review a decision of said St. Louis Court of Appeals unless the Supreme Court of said state is of the opinion that such decision conflicts with a controlling decision of said Supreme Court; that the Supreme Court of said state is given no power to modify or quash a decision and judgment of said St. Louis Court of Appeals upon the ground that such motion conflicted with a decision of the Supreme Court of the United States, or for any other reason than that such decision conflicts with a controlling decision of the Supreme Court of said State of Missouri; that after the overruling by said St. Louis Court of Appeals of your petitioner's motion for rehearing and within the proper time therefor and upon the 23rd day of July, 1924, your petitioner applied to the Supreme Court of said State of Missouri for a writ of certiorari to review the decision of said St. Louis Court of Appeals in this case upon the grounds that said decision conflicted with controlling decisions of the Supreme Court of said State of Missouri, which application for such writ was denied on the 8th day of October, 1924, by order duly entered of record by the Supreme Court of said State of Missouri, a certified copy of which order appears in the transcript of the record filed herewith; that upon the denial of said application for such writ of certiorari on said 3rd day of July, 1924, said judgment of the St. Louis Court of Appeals became final and the man-

date of said St. Louis Court of Appeals was on the 14th day of October, 1924, issued, but subsequently, on the 3rd day of November, 1924, by order of said St. Louis Court of Appeals, said mandate was recalled and this petition is now filed within three months after said judgment became final.

Your petitioner further shows:

(a) That said decision of said St. Louis Court of Appeals is repugnant to and in violation of the Act of Congress known as the Interstate Commerce Act (24 Stat. L. 379; 34 Stat. L. 584; 41 Stat. L. 483) and with the Act of Congress of August 29, 1916, 39 Stat. L. 645, known as the Federal Control Act.

(b) That said decision of said St. Louis Court of Appeals is repugnant to and in violation of the Act of Congress of March 21, 1918, 39 Stat. L. 645, 4 Stat. L. 451; Section 10 of which act provided that the President, in the operation of the transportation systems while under federal control, might initiate rates, fares, charges, classifications and regulations for the transportation of both passengers and property, which section as construed by this Court in Northern Pacific R. R. Co. v. State of North Dakota, 250 U. S. 135, made all such rates and regulations applicable to all classes of service, intrastate as well as interstate.

(c) That said decision of the St. Louis Court of Appeals is repugnant to and in violation of

the Act of Congress known as the Transportation Act of 1920, 41 Stat. L. 464, Section 208 (a), which provided that all rates, regulations and practices in effect on February 29, 1920, should continue in force and effect "until thereafter changed by state or federal authority, respectively, or pursuant to authority of law."

(d) That said decision of said St. Louis Court of Appeals is in conflict with the law as announced by this Court in the case of Houston & Texas Ry. v. U. S., 234 U. S. 342, in that the effect of said decision is to create and uphold a discrimination between passengers transporting baggage in intrastate commerce and those transporting baggage in interstate commerce, in that, while the mere delivery by the carrier of baggage transported in interstate commerce to another than the owner thereof is **not** a conversion of said baggage by the carrier which entitles the owner to recover the full value of said baggage, the transportation of such baggage under the same circumstances in intrastate commerce and the mere delivery thereof to another than the owner **is** a conversion entitling the owner of such baggage to recover its full value.

Your petitioner attaches to this application a certified copy of the proceedings had in said St. Louis Court of Appeals and a certified copy of the transcript of the record in said court.

Wherefore, in view of the premises, your petitioner prays that this Honorable Court will grant its writ

of certiorari directed to the St. Louis Court of Appeals, requiring that the complete record in said cause in said court, and its judgment therein, together with the motion for rehearing and the ruling of said Court thereon, be certified to this Court, and that this Honorable Court will thereupon proceed to correct the errors complained of and reverse the judgment of said St. Louis Court of Appeals and give to your petitioner such other and further relief as the nature of the case may require and to the Court may seem proper in the premises.

MISSOURI PACIFIC RAILROAD COMPANY,
Petitioner,

By EDWARD J. WHITE,
JAMES F. GREEN,
MERRITT U. HAYDEN,
Its Attorneys.

State of Missouri, }
City of St. Louis. } ss.

Merritt U. Hayden, being duly sworn, says that he is one of the attorneys for the above-named petitioner, Missouri Pacific Railroad Company, and that he has knowledge of the matters and things set forth in the above petition, and of the conduct of proceedings had in the above-entitled case, and that he verily believes that the facts as stated in said petition are true.

Merritt U. Hayden.

Subscribed and sworn to before me this 5th day of November, 1924. My commission will expire June 28th, 1925.

Geo. W. Collins,
Notary Public, St. Louis, Missouri.

(Notarial Seal)

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1924.

MISSOURI PACIFIC RAILROAD COMPANY,
Petitioner,
vs.
BYRD J. BOONE,
Respondent.
No.....

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

The fact that respondent's baggage was to be transported between points wholly within the State of Missouri does not preclude the enforcement of the provision in the tariff for a limited liability in the event of loss of, or damage to, said baggage. The provision for limitation of liability was valid with respect

to baggage moving in intrastate commerce for the following reasons:

(a) By the Act of Congress known as the Interstate Commerce Act (24 Stat. L. 379, 34 Stat. L. 584, 41 Stat. L. 483), it is made the duty of every common carrier, subject to the provisions of said act, to file with the Interstate Commerce Commission certain schedules showing all rates, fares and charges for transportation of persons and property between different points on its own route and between points on its own route and points on the route of any other carrier. The schedule of rates, fares and charges so filed and published are binding upon both carriers and shippers, and are the only lawful rates which may be collected by the carrier for transportation of passengers and property in **interstate** commerce.

Under the provisions of said act a carrier engaged in interstate commerce has the right to file with the Interstate Commerce Commission tariffs and regulations governing the transportation of baggage in interstate commerce limiting its liability for loss of or damage to such baggage to a certain amount unless a greater value is declared by the passenger at the time of delivering and checking the baggage for transportation, and such limitation of liability is valid and binding upon both carrier and passenger.

24 Stat. L. 379, as amended by 34 Stat. L. 584, and 41 Stat. L. 483;

Boston & Maine Railroad v. Hooker, 233 U. S. 97;
Railway Co. v. Rankin, 241 U. S. 319;
Express Co. v. Levee, 263 U. S. 19;
Railroad Co. v. Sawmill Co., 251 S. W. 434;
Railroad Co. v. Maxwell, 237 U. S. 94;
Hines v. Burnett, 107 S. E. 657;
Powell v. Hines, 104 S. E. 533;
Express Co. v. Lindenburg, 260 U. S. 584;
Express Co. v. Croninger, 226 U. S. 491;
Kansas City Southern Ry. Co. v. Carl, 227 U. S. 652.

(b) In accordance with the Act of Congress of August 29, 1916, the President of the United States, through the Director General of Railroads, on December 28, 1917, took possession, and assumed control, of the operation of the various railroads of the United States, including appellant, and thereafter and until February 29, 1920, appellant's railroad was under the operation of the Federal Government.

39 Stat. L. 645;
Proclamation of the President, December 26, 1917.

(c) Section 10 of the Act of Congress of March 21, 1918, provided that the President, in the operation of the transportation systems while under federal control, might initiate rates, fares, charges, classifications and regulations for the transportation of both pas-

sengers and property. And thereafter the Director General of Railroads made an order establishing a schedule of rates for all roads under his control, including appellant, effective in June, 1918, and covering **all** classes of service.

(d) At the time of the termination of the period known as federal control of the railroads, to wit, on February 29, 1920, the Director General of Railroads in charge of the operation of the lines of railroad of your petitioner had filed with the Interstate Commerce Commission the tariff which your petitioner offered in evidence upon the trial of this case, but which was excluded upon objection of respondent. That tariff governed the transportation of baggage over the lines of railroad of your petitioner. This Court, in the case of **Northern Pacific Ry. Co. v. State of North Dakota, 250 U. S. 135,** had expressly held that said tariff covered "all classes of service, **intrastate** as well as interstate." Your petitioner, therefore, had the undoubted right, under said tariff, to limit its liability in the event of loss of, or damage to, baggage transported between points within the State of Missouri down to February 29, 1920. That right existed by virtue of the foregoing provisions of said Acts of Congress as construed by this Court in the Northern Pacific case.

Congress then passed the act known as the Transportation Act, 1920, which went into effect upon the

termination of the period of federal control of railroads. Section 208 (a) of that act provided as follows:

> "All rates, fares and charges, and all classifications, regulations and practices in anywise changing, affecting or determining any part or the aggregate of rates, fares or charges, or the value of the service rendered which on February 29, 1920, are in effect on the lines of carriers subject to the Interstate Commerce Act shall continue in force and effect until thereafter changed by state or federal authority, respectively, or pursuant to authority of law; but prior to September 1, 1920, no such rate, fare or charge shall be reduced and no such classification, regulation or practice shall be changed in such manner as to reduce any such rate, fare or charge unless such reduction or change is approved by the Commission."

When Congress thus provided that such rates, fares and charges should continue in force after February 29, 1920, and until changed by state or federal authority, it was, of course, the intention to continue in force not only the rates and charges themselves but also such construction and interpretation of said rates and charges as had been announced by this Court and therefore, unless those rates and charges had been changed by either state or federal authority between February 29, 1920, and January 3, 1922, on which date this loss occurred,

then the tariff filed, during the period of federal control, with the Interstate Commerce Commission by the Director General of Railroads, containing the provision for limitation of liability for loss of, or damage to, baggage, as construed by this Court, authorized your petitioner to limit its liability for the loss of respondent's baggage, even though that baggage was transported between points wholly within the State of Missouri.

The evidence offered at the trial of this case by your petitioner tending to establish that said tariff had not been changed by either federal or state authority was, therefore, competent and should have been admitted and the action of the trial court in excluding this evidence and the decision of the St. Louis Court of Appeals approving that action have the effect of depriving your petitioner of the rights and benefits accruing to it by virtue of the provisions of said section of the Transportation Act.

II.

In the case of **American Railway Express Co. v. Levee, 263 U. S. 19,** this Court upheld and enforced the provision in a tariff filed with the Interstate Commerce Commission limiting the liability of the carrier for loss of a trunk and contents, which had been transported in interstate commerce, to wit, from

Madisonville, Texas, to Thibodaux, Louisiana. **The carrier failed to deliver the trunk at destination.** This Court, however, held that the effect of the provision limiting the liability of the carrier could not be avoided or escaped by bringing the suit upon the theory of a conversion by the carrier because of its failure to deliver the baggage to the proper party at destination, saying:

> "Coming to the merits, the limitation of liability was valid, whatever may be the law of the state in cases within its control (Adams Express Co. v. Croninger, 226 U. S. 491; Union Pacific R. R. Co. v. Burke, 255 U. S. 317, 321; American Ry. Express Co. v. Lindenburg, 260 U. S. 584). **The effect of the stipulation could not have been escaped by suing in trover and laying the failure to deliver as a conversation if that had been done** (Georgia, Florida & Alabama Ry. Co. v. Blish Milling Co., 241 U. S. 190, 197). No more can it be escaped by a state law **or decision that a failure to deliver shall establish a conversation** unless explained. The law of the United States cannot be evaded by the forms of local practice."

The St. Louis Court of Appeals, in this case, held that the mere delivery by your petitioner of respondent's baggage to another person who presented a check which corresponded with the check on the trunk at the time of its delivery, and the consequent failure to deliver said baggage to its owner, consti-

tuted a conversion by your petitioner which precluded the application of the stipulation in the tariff limiting its liability. By the decision of the St. Louis Court of Appeals respondent, in this case, is enabled to do the very thing which this Court, in the Levee case, said could not be done, viz., escape the effect of said stipulation by relying upon the theory of conversion.

III.

The law as announced by this Court in the Levee case cited under subdivision II of this brief is that the failure of a carrier to deliver baggage transported in **interstate** commerce to its owner at destination does not preclude the application of a stipulation in a tariff limiting the liability of the carrier upon the theory that such failure amounts to a conversion, and that where, in such a case, the owner brings suit upon the theory that such failure constituted a conversion of the baggage, the liability of the carrier is, nevertheless, to be determined according to the provision of the tariff.

The decision of the St. Louis Court of Appeals in this case is that the decision of this Court in the Levee case is not applicable to a case involving the transportation of baggage between points in the same state, and that where the carrier fails to deliver such baggage to the owner at destination, there **is** a conver-

sion thereof which authorizes the owner to recover the full value, and which renders the provisions of the tariff inapplicable.

We submit that the effect of the decision of the St. Louis Court of Appeals is to create and enforce a discrimination in favor of the owner of baggage moving in **intrastate** commerce, as against the owner of baggage moving in interstate commerce in cases involving identically the same character of loss, and that, therefore, said decision is in conflict with the law as announced by this Court in the case of **Houston & Texas Ry. v. United States, 234 U. S. 342.**

In that case this Court said:

> "First. It is unnecessary to repeat what has frequently been said by this Court with respect to the complete and paramount character of the power confided to Congress to regulate commerce among the several states. It is of the essence of this power that where it exists it dominates. Interstate trade was not left to be destroyed or impeded by the rivalries of local governments. The purpose was to make impossible the recurrence of the evils which had overwhelmed the Confederation and to provide the necessary basis of national unity by insuring 'uniformity of regulation against conflicting and discriminating state legislation.' By virtue of the comprehensive terms of the grant, the authority of Congress is at all times adequate to meet the varying exigencies that arise and to

protect the national interests by securing the freedom of interstate commercial intercourse from local control."

* * * * * * *

"Congress is empowered to regulate—that is, to provide the law for the government of interstate commerce; to enact 'all appropriate legislation' for its 'protection and advancement' (The Daniel Ball, 10 Wall. 557, 564); to adopt measures 'to promote its growth and insure its safety' (County of Mobile v. Kimball, supra); 'to foster, protect, control and restrain' (Second Employers' Liability Cases, supra). Its authority, extending to these interstate carriers as instruments of interstate commerce, necessarily embraces the right to control their operations in all matters having such a close and substantial relation to interstate traffic that the control is essential or appropriate to the security of that traffic, to the efficiency of the interstate service, and to the maintenance of conditions under which interstate commerce may be conducted upon fair terms and without molestation or hindrance. As it is competent for Congress to legislate to these ends, unquestionably it may seek their attainment by requiring that **the agencies of interstate commerce shall not be used in such manner as to cripple, retard or destroy it. The fact that carriers are instruments of intrastate commerce,** as well as interstate commerce, **does not derogate from the complete and paramount authority of Congress over the latter** or preclude the federal power from being exerted to prevent

the intrastate operations of such carriers from being made a means of injury to that which has been confided to federal care. Wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves the control of the other, it is Congress, and not the state, that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority and the state, and not the nation, would be supreme within the national field."

* * * * * * *

"While these decisions sustaining the federal power relate to measures adopted in the interest of the safety of persons and property, they illustrate the principle that Congress in the exercise of its paramount power may prevent the common instrumentalities of interstate and intrastate commercial intercourse from being used in their intrastate operations to the injury of interstate commerce. This is not to say that Congress possesses the authority to regulate the internal commerce of a state, as such, but that it does possess the power to foster and protect interstate commerce, and to take all measures necessary or appropriate to that end, although intrastate transactions of interstate carriers may thereby be controlled.

"This principle is applicable here. We find no reason to doubt that Congress is entitled to keep the highways of interstate communication open to interstate traffic upon fair and equal terms.

That an unjust discrimination in the rates of a common carrier, by which one person or locality is unduly favored as against another under substantially similar conditions of traffic, constitutes an evil is undeniable; and where this evil consists in the action of an interstate carrier in unreasonably discriminating against interstate traffic over its line, the authority of Congress to prevent it is equally clear. It is immaterial, so far as the protecting power of Congress is concerned, that the discrimination arises from intrastate rates as compared with interstate rates. The use of the instrument of interstate commerce in a discriminatory manner so as to inflict injury upon that commerce, or some part thereof, furnishes abundant ground for federal intervention. Nor can the attempted exercise of state authority alter the matter, where Congress has acted, for a state may not authorize the carrier to do that which Congress is entitled to forbid and has forbidden.

"It is also to be noted—as the Government has well said in its argument in support of the Commission's order—that the power to deal with the relation between the two kinds of rates, as a relation, lies exclusively with Congress. It is manifest that the state cannot fix the relation of the carrier's interstate and intrastate charges without directly interfering with the former, unless it simply follows the standard set by federal authority."

For these reasons we submit that because of the fact that on February 29, 1920, there was on file

with the Interstate Commerce Commission a tariff containing a provision for limiting the liability of your petitioner in the event of loss of or damage to baggage to the sum of one hundred dollars ($100.00) in cases in which no greater value was declared by the owner at the time of checking such baggage, which tariff and which limitation of liability, by express construction by this Court in the Northern Pacific Railway case, applied to the transportation of baggage in **intrastate** commerce as well as to baggage transported in interstate commerce and because of the provision of Section 208(a) of the Transportation Act 1920, continuing said tariff in force until changed by proper state or federal authority, your petitioner had the right to rely upon said tariff and to limit its liability accordingly and that it had the further right, upon the trial of this case, to have said tariff admitted in evidence and to have admitted further evidence tending to show that said tariff had not been changed by state or federal authority after February 29, 1920, and prior to the date on which respondent shipped her baggage, and that the St. Louis Court of Appeals erred in holding that such evidence was properly excluded by the trial court. The law as announced by this Court in the Levee case being plain that the failure to deliver this baggage to respondent, had it been transported in interstate commerce, would not have constituted a conver-

sion of the same, authorizing her to sue in trover and to thereby escape the application of the provision in the tariff limiting the liability of your petitioner, and the decision of the St. Louis Court of Appeals being to the exact contrary, and expressly holding that the failure of your petitioner to deliver said baggage to respondent **did** constitute a conversion which amounted to an abandonment by it of the contract of transportation, thereby precluding it from relying upon any provision of such contract of transportation, the effect of said decision of the St. Louis Court of Appeals cannot be otherwise than to uphold and create a discrimination in favor of the owner of baggage transported in intrastate commerce and against the owner of baggage transported in interstate commerce for exactly the same character of loss, and, in that respect, said decision is in conflict with the law as announced by this Court in the Northern Pacific Railway case, for which reasons we respectfully submit that the writ of certiorari prayed for herein should be issued to the end that said decision may be reviewed and reversed by this Court.

EDWARD J. WHITE,
JAMES F. GREEN,
MERRITT U. HAYDEN,
Attorneys for Petitioner.